

<p>DISTRICT COURT, BROOMFIELD COUNTY, COLORADO Address: 17 Descombes Drive Broomfield, CO 80020 Phone: 720-887-2100</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PLAINTIFF AND CONTESTOR: OUR BROOMFIELD</p> <p>v.</p> <p>DEFENDANT AND CONTESTEE: CITY AND COUNTY OF BROOMFIELD, COLORADO</p>	
<p><i>Attorneys for Plaintiff:</i> Name: Michael Ray Harris (CO Bar No. 35395) Address: Environmental Law Clinic University of Denver Sturm College of Law 2255 E. Evans Ave Denver, CO 80208 Phone: 303-871-6140 E-mail: elc@law.du.edu</p> <p>Name: James Daniel Leftwich, Esq. (CO Bar No. 38510) Address: MindDrive Legal Services, LLC 4730 Walnut Street Suite 110 (Office 2) Boulder, CO 80301 Phone: 720-212-0831 Email: dan@minddrivelegal.com</p>	<p>Case Number:</p> <p>Div.:</p>
<p style="text-align: center;">VERIFIED PETITION FOR JUDICIAL REVIEW OF BALLOT TITLE (C.R.S. § 1-1-101 <i>et seq.</i>)</p>	

Contestor, Our Broomfield, files this Petition seeking to contest the Ballot Title set by the City and County of Broomfield and the Broomfield City Council concerning a proposed City Charter Amendment submitted by Our Broomfield (“Proposed Charter Amendment”). The Ballot Title adopted by the City Council fails to conform to state and local law because it skews the purpose of Our Broomfield’s Proposed Charter Amendment by suggesting its intent is to place restrictions on the private property interests of mineral rights owners. Thus, the Ballot

Title does not “fairly and accurately” represent the true intent and meaning of the Proposed Charter Amendment.

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to C.R.S. § 1-11-203.5(1) because this Petition is verified and contests the content of a Ballot Title set to be voted on at Broomfield’s next coordinated election, and has been filed within five days after the City Council set the Ballot Title for the Proposed Charter Amendment.
2. Venue is proper in this Court under C.R.S. § 1-11-203.5(1) because this Court sits in the political subdivision within which the contest has arisen.
3. Pursuant to C.R.S. §§ 1-11-203.5(1) and 213(3), Contestor is filing a bond in the amount of \$500 with the Clerk of the Court as an assurance that Contestor will maintain the contest. Contestor acknowledges its liability in the event of failure to maintain the contest, and the bond will run to the Contestee and be conditioned to pay all costs in case of failure to maintain the contest. Contestor is willing to provide additional bonds, with sureties, as may be required by this Court.

PARTIES

4. Contestor Our Broomfield is a citizen group that formed to protect the citizens’ of Broomfield rights to be healthy and protect their property, property values, public safety and welfare, and the environment. Our Broomfield’s mission is to educate Broomfield about hydraulic fracturing (“fracking”); and to place a Proposed Charter Amendment on the ballot in Broomfield instituting a five-year moratorium on hydraulic fracturing. Our Broomfield has an interest in asserting its rights to have its Proposed Charter Amendment placed on the ballot with a fair and accurate ballot title for the electorate of Broomfield to vote on.
5. Broomfield is a home-rule city and county located in Broomfield County, Colorado. The Broomfield City Council is responsible for setting a fair and accurate petition title for charter amendments proposed by petition.

LEGAL BACKGROUND

6. The Home Rule Charter of the City and County of Broomfield provides that “[t]his Charter may be amended at any time in the manner provided by statute.” Broomfield Home Rule Charter, Ch. XVIII, § 18.6.

7. Colorado's statute governing the amendment of charters is the Municipal Home Rule Act of 1971, C.R.S. §§ 31-2-201 *et seq.* ("Home Rule Act").
8. The Home Rule Act provides that, after the city clerk has certified to the governing body that a petition is valid and sufficient, "the governing body shall set a ballot title for the proposed amendment at its next meeting." C.R.S. § 31-2-210(3).
9. The Home Rule Act provides that a "[b]allot title" means "a ballot title as defined in section 31-11-103(1)." C.R.S. § 31-2-203(1). The referenced provision defines "ballot title" as the title and submission clause. C.R.S. § 31-11-103(1). The "title" is a "brief statement that fairly and accurately represents the true intent and meaning of the proposed initiative." C.R.S. § 31-11-103(5).
10. The Home Rule Act further provides that it is unlawful "for any person to do willfully any act in reviewing the petition or setting the ballot title which shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election held under this part 2." C.R.S. § 31-2-225(1)(f). Any person who violates this provision "commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S."
11. Colorado's Uniform Election Code of 1992, C.R.S. §§ 1-1-101 through 1-13-803, ("Uniform Election Code") "applies to any municipal election conducted as part of a coordinated election except to the extent that this code conflicts with a specific charter provision." C.R.S. § 1-1-102(1).
12. The Uniform Election Code provides for the contesting of a ballot title's content prior to an election. Specifically, the Uniform Election Code provides that "all election contests arising out of a ballot issue or ballot question election concerning the order on the ballot or the form and content of any ballot title shall be summarily adjudicated by the district court sitting for the political subdivision within which the contest arises prior to the election." C.R.S. § 1-11-203.5(1). This procedure "shall be the exclusive procedure to contest or otherwise challenge the ...content of the ballot title." C.R.S. § 1-11-203.5(5).

FACTUAL ALLEGATIONS

13. On June 12, 2013, Our Broomfield filed with the Broomfield City Clerk a Statement of Intent to gather signatures and a Petition to place a Proposed Charter Amendment on the November 5, 2013 Coordinated Election in Broomfield.
14. The stated Purpose of Our Broomfield's Proposed Charter Amendment is "[t]o protect property, property values, public safety and welfare, and the environment by prohibiting the use of

hydraulic fracturing to extract oil, gas, or other hydrocarbons within the City and County of Broomfield.” The Petition, which contains the full text of Proposed Charter Amendment, is attached as Exhibit A.

15. On June 13, 2013, the City Clerk notified Our Broomfield that the petition had been approved as to form and Our Broomfield could begin circulating the petition for signatures.
16. On August 2, 2013, Our Broomfield submitted the petition, with over 3,000 signatures, to place the Proposed Charter Amendment on the November ballot.
17. The City Clerk deemed the petition sufficient in terms of number of signatures on August 9, 2013.
18. At the City Council’s next regularly scheduled meeting on August 13, 2013, the City Council set the Ballot Title by a 5-4 vote. The Ballot Title as set by the City Council reads:

Shall Broomfield’s Home Rule Charter be amended to prohibit the owners of property rights in oil and gas minerals from extracting their property through the use of hydraulic fracturing methods and impose additional restrictions on wastewater storage and disposal methods than existing state regulations for the next five years to address concerns about the potential dangers of hydraulic fracturing?

19. On August 19, 2013, Our Broomfield submitted an Official Protest of Setting of Ballot Title to Broomfield’s City Clerk, City Attorney, Mayor, City Manager, and City Council members. The Protest requested that the City Council modify the Ballot Title language and proposed alternative language for the ballot title. The Protest Letter is attached as Exhibit B.
20. The Ballot Title adopted by the City Council skews the Proposed Charter Amendment’s purpose by suggesting that its intent is to place unlawful restrictions on the private property interests of mineral rights owners and oil and gas operators, and thus does not “fairly and accurately” represent the “true intent and meaning” of the Proposed Charter Amendment.
21. The Proposed Charter Amendment’s real intended purpose—which was made clear to those who signed the petition to place it on the ballot—is to protect the public health, safety, and welfare of the citizens of Broomfield. While the Proposed Charter Amendment does seek to ensure that fracking is prohibited within the City for a five-year period, it does so **not to curtail property rights of mineral owners**, but to ensure that the people of Broomfield’s health, safety, welfare, and private property are protected.

22. The words “public safety, and welfare, and the environment” which are clearly and expressly stated as being central to the intent of the Proposed Charter Amendment, do not appear in the Ballot Title.
23. Our Broomfield’s Proposed Charter Amendment emphasizes public health and the rights of citizens to be protected from polluting activities in their communities. The rights of the people affected—such as the rights of surface owners—are not mentioned in the Ballot Title. By only focusing on the rights of mineral owners, the City Council has not adopted ballot language that conforms to the Home Rule Act’s requirements.
24. As of the filing of this Petition, the City Council had not indicated any intent to modify the Ballot Title.

FIRST CAUSE OF ACTION

25. All allegations above are restated and incorporated in this Cause of Action.
26. Under state law, a ballot title must consist of “a brief statement that fairly and accurately represents the true intent and meaning of the proposed initiative.”
27. The Ballot Title adopted by the City Council does not meet the City Council’s legal obligation under the Broomfield Charter and the Home Rule Act.
28. The Ballot Title makes unfounded legal conclusions regarding the property interests of mineral developers and suggests that the purpose of the Proposed Charter Amendment is to unduly infringe on mineral property rights or place restrictions on wastewater storage that are more restrictive than state regulations allow.
29. It is not the duty of the City Council to take away the rights of the people of Broomfield to pass an amendment fairly aimed at protecting the public health, safety, and welfare, and the environment from hydraulic fracturing by making a legal determination that rests with the courts.
30. It is unlawful for the City Council to skew the Ballot Title to reflect their premature legal opinion in an attempt to persuade the citizens of Broomfield to not vote for the Proposed Charter Amendment.
31. The Ballot Title set by the Contestee does not comply with the applicable law as it is not a fair and accurate representation of the Proposed Charter Amendment.

PRAYER FOR RELIEF

Based upon the allegations in the foregoing paragraphs, Contestor respectfully requests that this Court:

1. Issue an order finding that the content of the Ballot Title does not conform to the requirements of the Home Rule Act and the Broomfield Charter, pursuant to C.R.S. § 1-11-203.5.
2. Issue an order, pursuant to C.R.S. § 1-11-203.5, directing the Broomfield City Council to set the Ballot Title to be a fair and accurate representation of the Proposed Charter Amendment.
3. Issue an Order pursuant to C.R.S. § 1-11-203.5, directing the Broomfield City Council to set the corrected ballot title to read as follows:

Shall Broomfield’s Home Rule Charter be amended for five years so as to prohibit the use of hydraulic fracturing (fracking) to extract oil, gas, or other hydrocarbons within the City and County of Broomfield and to prohibit the disposal or open pit storage of solid or liquid wastes created in connection with the hydraulic fracturing process in order to protect property, property values, public safety, welfare, and the environment?

4. Award Petitioner its costs of litigation and reasonable attorneys’ fees; and
5. Grant further relief as may be just and proper.

Respectfully submitted this 19th day of August, 2013.

/s/ Michael Ray Harris
Michael Ray Harris

/s/ James Daniel Leftwich
James Daniel Leftwich

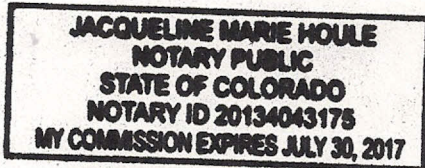
*Counsel for Contestor Our
Broomfield*

STATEMENT OF VERIFICATION

I, Laura Fronckiewicz, affirm that I am the Chair of the Board of Directors of Contestor Our Broomfield and a registered elector of the City and County of Broomfield, that I have read the foregoing petition and know the contents thereof, and that the same is true and correct upon information and belief.

Laura Fronckiewicz
Petitioner's signature

LAURA FRONCKIEWICZ
Petitioner's printed name



*Chair, Our Broomfield Board of Directors;
and*

*Registered elector of the City and County of
Broomfield*

Sworn to before me this 19 day of August, 2013.
In the State of Colorado, County of Broomfield.

Jacqueline Marie Houle
Notary Public